

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

GREGG FREISHTAT, as  
Shareholders' Representative,

Plaintiff,

V.

LIVEPERSON, INC.,

Defendant.

Civil Action No. 1:07-CV-6838-JGK

## [PROPOSED] SCHEDULING ORDER AND DISCOVERY PLAN

Plaintiff Gregg Freishtat, as Shareholders' Representative ("Freishtat"), and Defendant LivePerson, Inc. ("LivePerson"), by and through their respective undersigned counsel, conferred pursuant to Fed. R. Civ. P. 26(f) on October 4, 2007 at the offices of WilmerHale, located at 399 Park Avenue, New York, New York, 10022, which, together with subsequent communications between the parties, resulted in agreement among the undersigned parties to this litigation (the "Litigation") to the discovery-related and other matters set forth herein.

## I. PRE-DISCOVERY DISCLOSURES

1. The initial disclosures required under Fed. R. Civ. P. 26(a)(1) shall be made on or before December 14, 2007.

## II. DISCOVERY PLAN

2. **Documentary Production:** Production of documents responsive to any requests for production of documents and things served on or before April 30, 2008 shall begin promptly after responses and/or objections are served, continue on a rolling basis and be completed on or before May 30, 2008.

3. **Depositions:** Depositions shall be completed on or before May 30, 2008.

4. **Electronically-Stored Information:** The parties have agreed to continue to work together to resolve necessary issues relating to the preservation and production of electronically-stored information (“ESI”), including the sources to be searched for ESI and the format and costs of ESI production.

5. **Expert Reports and Discovery:** The parties have agreed to the following schedule relating to the discovery of experts:

- a) The party bearing the burden of proof on any area in respect of which it seeks to submit expert testimony shall identify all such areas to the other party on or before May 16, 2008.
- b) A party will identify any additional areas in respect of which it seeks to submit expert testimony in response to opposing party’s designations in ¶5(a) *supra* on or before May 30, 2008.
- c) The party bearing the of proof on any area in respect of which it seeks to submit expert testimony shall serve its expert report(s) on all such areas on or before June 30, 2008.
- d) The parties will exchange rebuttal expert reports on or before July 27, 2008.
- e) Depositions of experts shall be completed by all parties on or before August 29, 2008.

### **III. OTHER MATTERS**

6. **Amendment and Joinder:** If Plaintiff wishes to amend the Complaint or to join additional parties in the Litigation, he shall do so no later than January 31, 2008.

7. **Summary Judgment:** A moving party shall file papers in respect of a motion for summary judgement on or before September 30, 2008.

8. **Protective Order:** Issues and procedures relating to claims of privilege or of protection of material are addressed in the parties' Proposed Stipulated Protective Order, filed contemporaneously herewith, and incorporated by reference.

9. **Status Conference:** The parties shall appear for a status conference on \_\_\_\_\_, 2008, at \_\_\_\_\_.

SO ORDERED.

Dated: \_\_\_\_\_, 2007  
New York, New York

\_\_\_\_\_  
United States District Judge

**CONSENTED AND AGREED TO BY:**

/s/ Arthur D. Brannan

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Date: December 3, 2007

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